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Attorneys for Defendant LINCOLN  
DIAGNOSTICS, INC.

The Honorable Alan A. McDonald  
FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 10 2002

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PERKINS COIE LLP

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON**

HOLLISTER-STIER )  
LABORATORIES, LLC, a Delaware )  
limited liability company, )

Plaintiff, )

v. )

LINCOLN DIAGNOSTICS, INC., )  
an Illinois corporation, )

Defendant, )

No. CS-02-0160-AAM

**LINCOLN DIAGNOSTICS'  
ANSWER TO COMPLAINT  
FOR FALSE ADVERTISING**

TO: CLERK OF THE COURT

AND TO: Plaintiff, HOLLISTER-STIER LABORATORIES, LLC and its  
attorneys

PAINE, HAMBLIN, COFFIN, BROOKE & MILLER LLP  
717 WEST SPRAGUE AVENUE, SUITE 1200  
SPOKANE, WA 99201 PHONE: (509) 455-6000

ANSWER TO COMPLAINT - 1

1 Defendant, LINCOLN DIAGNOSTICS, INC., by and through its  
2 attorney, Richard Kuhling of Paine, Hamblen, Coffin, Brooke & Miller, LLP,  
3 in answer to the Plaintiff's Complaint admits, denies and alleges as follows:

4 **I. PARTIES**

5 1. Upon information and belief, this Defendant admits the  
6 allegations contained in paragraph 1 of Plaintiff's Complaint.

7 2. This Defendant admits the allegations contained in paragraph 2 of  
8 Plaintiff's Complaint.

9 **II. JURISDICTION AND VENUE**

10 3. This Defendant denies that this Court has subject matter  
11 jurisdiction over this action. This Defendant admits that Plaintiff's Complaint  
12 seeks relief in part under the laws of the United States, and the laws of the  
13 State of Washington, but denies liability pursuant to those laws. This  
14 Defendant is without sufficient information about the citizenship of Plaintiff or  
15 the amount in controversy, therefore, denies that this Court has jurisdiction  
16 pursuant to a 28 U.S.C. §1332.

17 4. This Defendant admits that this Court has personal jurisdiction  
18 over defendant as it has marketed and sold products in Washington, but denies  
19 each and every other allegation contained in paragraph 4 of Plaintiff's  
20 Complaint.

21 5. This Defendant denies that venue is proper in this Court.

22 **III. BASIS FOR CLAIMS**

23 6. This Defendant admits the allegations contained in paragraph 6 of  
24 Plaintiff's Complaint.

25 7. This Defendant admits that it manufactures, markets and sells the  
26 DUOTIP-TEST® MULTI-TEST® and MULTI-TEST II®. This Defendant  
27 denies that the DUOTIP-TEST® has "a plastic tip," but asserts that the

28 *PAINE, HAMBLEN, COFFIN, BROOKE & MILLER LLP*  
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1 DUOTIP-TEST® consists of a plastic disposable cylinder with two fine  
2 tapered points used to introduce the allergenic extract using either a modified  
3 prick technique or a rotation technique.

4 8. Upon information and belief, this Defendant admits the  
5 allegations contained in paragraph 8 of Plaintiff's Complaint.

6 9. This Defendant admits that it has advertised the DUOTIP-TEST®  
7 in The Journal of Allergy and Clinical Immunology and The Annals of  
8 Allergy, Asthma and Immunology. This Defendant denies all allegations that  
9 these advertisements contain false or misleading claims.

10 10. This Defendant denies the allegations contained in paragraph 10  
11 of Plaintiff's Complaint.

12 11. This Defendant denies the allegations contained in paragraph 11  
13 of Plaintiff's Complaint.

#### 14 IV. CLAIMS

15 12. Plaintiff makes no allegation of fact in paragraph 12, therefore,  
16 no response is provided.

17 13. This Defendant denies the allegations contained in paragraph 13  
18 of Plaintiff's Complaint.

19 14. This Defendant denies the allegations contained in paragraph 14  
20 of Plaintiff's Complaint.

21 15. This Defendant denies the allegations contained in paragraph 15  
22 of Plaintiff's Complaint.

23 16. Plaintiff makes no allegation of fact in paragraph 16, therefore,  
24 no response is provided.

25 17. This Defendant denies the allegations contained in paragraph 17  
26 of Plaintiff's Complaint.

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1       18. This Defendant denies the allegations contained in paragraph 18  
2 of Plaintiff's Complaint.

3       19. This Defendant denies the allegations contained in paragraph 19  
4 of Plaintiff's Complaint.

5  
6       Further answering Plaintiff's Complaint, and by way of affirmative  
7 defense, this Defendant alleges:

8       1. A previously filed action involving the same parties and the same  
9 issues is currently pending in the U.S. District Court for the Central District of  
10 Illinois, No. 2002 cv 2109. In the interests of comity and judicial economy,  
11 this Court should dismiss, stay or transfer this case to the U.S. District Court  
12 for the Central District of Illinois pursuant to the "first to file" rule.

13       2. This Court lacks subject matter jurisdiction as a previously filed  
14 action involving the same parties and the same issues is currently pending in  
15 another district.

16       3. The proper venue in this action does not lie in the Eastern District  
17 of Washington, but lies in Illinois, where the same parties are currently  
18 litigating the same issues. Further, Illinois is the location of the weight of  
19 information and evidence related to the advertisements at issue in this case.

20       4. Plaintiff's Complaint fails to state a claim upon which relief can  
21 be granted in that the advertisements cited by Plaintiff are not false or  
22 misleading.

23       5. To the extent that discovery reveals the existence of any other  
24 affirmative defenses not presently known to this Defendant, Defendant  
25 reserves the right to amend its answer to include any such affirmative defenses  
26 in the interest of justice.

1 WHEREFORE, Defendant, having fully answered Plaintiff's Complaint  
2 prays that the same be dismissed and that this Defendant be awarded its costs  
3 and fees as allowed by law and statute, including attorney fees, and such other  
4 relief the Court deems just and equitable.

5 DATED this 10<sup>th</sup> day of June, 2002.

6  
7 PAINE, HAMBLIN, COFFIN,  
8 BROOKE & MILLER LLP

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11 By: Gerald Kohling 22997  
12 for Richard W. Kuhling, WSBA #7927  
13 Attorneys for Defendant  
14 Lincoln Diagnostics, Inc.


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**CERTIFICATE OF SERVICE**

I certify that on this 10<sup>th</sup> day of June, 2002, a true and correct copy of the foregoing LINCOLN DIAGNOSTICS' ANSWER TO COMPLAINT FOR FALSE ADVERTISING was caused to be served as indicated below and addressed as follows:

Susan E. Foster  
Jed M. Silversmith  
Mary P. Gaston  
PERKINS COIE LLP  
221 N. Wall Street, Suite 600  
Spokane, WA 99201  
Attorneys for Plaintiff

☐ U.S. MAIL  
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RICHARD W. KUHLING

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